

Appendix 1
to comment response document for the Dry Creek
Rancheria NPDES Permit No. 0005241

Tribes response to Dry Creek Rancheria defined as “Indian Country”

Letter: from J. Michelle Hickey, Holland & Knight LLP to John Tinger, US EPA.
dated November 4, 2006.

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November 4, 2006

VIA FAX AND FIRST CLASS MAIL

John Tinger
EPA Region 9
75 Hawthorne Street
San Francisco, CA 94105

Re: Stand Up For California's Comments to Draft USEPA NPDES Permit (CA 0005241) for the Dry Creek Rancheria Band of Pomo Indians

Dear Mr. Tinger:

This firm represents the Dry Creek Rancheria Band of Pomo Indians (the "Tribe"), a federally recognized Indian Tribe. This letter is the Tribe's response to EPA's request to provide information regarding the assertions in the October 2, 2006 comment letter to the Draft USEPA NPDES Permit (CA 0005241) (the "Permit") submitted by Stand Up For California (hereinafter "SUFC"). Specifically, EPA asked us to address SUFC's assertion that EPA does not have jurisdiction over the issuance of the Permit because, SUFC incorrectly claims, the Dry Creek Rancheria is not "Indian country."

SUFC's claim is entirely without any merit whatsoever. Under clearly established federal law discussed below, the Tribe's lands are unquestionably "Indian country."

I. Contrary to SUFC's Assertion, the Dry Creek Rancheria Is "Indian country" Under 18 U.S.C. Section 1151 and 40 C.F.R. Section 122

SUFC's assertion that the Rancheria does not meet the definition of "Indian country" as defined at 18 U.S.C. § 1151 is wrong and ignores all relevant legal precedent. As stated in 40 C.F.R. § 122.31(c) and as SUFC acknowledges, "[w]ithin Indian country, the NPDES permitting authority is generally EPA, unless [the tribe is] authorized to administer the NPDES program." "Indian country" is defined in 40 C.F.R. § 122.2 as "(1) All lands within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation; (2) All dependent Indian communities with[in] the borders of the United States whether within the originally or subsequently acquired territory thereof, and whether within or without the limits of a state; and (3) All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same." The definition of "Indian country" found in 40 C.F.R. § 122.2 is the same as that found in 18 U.S.C. § 1151, which defines "Indian country" as "(a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the originally or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same."

As the following demonstrates, Dry Creek Rancheria is "Indian country" under both 18 U.S.C. § 1151

and 40 C.F.R. § 122.2 because it is a reservation. Alternatively, even if it were not a reservation, it would be a dependent Indian community under federal law.

A. An Indian "Reservation" Is All Land Set Aside by the Federal Government for the Use or Occupation of Tribal Members

Contrary to SUFC's assertions, Dry Creek Rancheria is a reservation under the first category of land qualifying as "Indian country" in the definition found in 18 U.S.C. § 1151 and 40 CFR § 122.2. SUFC simply is ignorant of the cases defining "reservation" under Section 1151 since such cases clearly establish that the term "reservation" includes land validly set apart for the use of Indians, such as the Dry Creek Rancheria.

The Supreme Court has repeatedly held that the test for determining whether land is "Indian country" does not turn upon whether that land is denominated "trust land" or "reservation." Rather, the Court asks whether the area has been "**validly set apart for the use of the Indians as such, under the superintendence of the Government.**" *Oklahoma Tax Comm'n v. Citizen Band Potawatomi Indian Tribe of Oklahoma*, 498 U.S. 505, 511, 111 S.Ct. 905, 910 (1991) (quoting *U.S. v. John*, 437 U.S. 634, 648-649, 98 S.Ct. 2541, 2549 (1978), and citing *United States v. McGowan*, 302 U.S. 535, 539, 58 S.Ct. 286, 288, 82 L.Ed. 410 (1938)) (emphasis added). As it did in *John*, the Court in *Citizen Band Potawatomi* found that the tribe's "land is '**validly set apart and thus qualifies as a reservation**" *Citizen Band Potawatomi*, 498 U.S. at 511, 111 S.Ct. at 910 (quoting *John*, 437 U.S. at 649, 98 S.Ct. at 2549).

Similarly, in *Healing v. Jones*, 210 F. Supp. 125 (D. Ariz. 1962), a three judge panel adjudicated the "conflicting claims of the Hopi and Navajo Indians in and to Indian reservation lands situated in northeastern Arizona." *Id.* at 128. This "reservation," the panel noted, was created by an executive order that "set apart" the lands "for the use and occupancy" of the Indians. *Id.* at 129 n.1. The executive order does not use the word "reservation." The fact that it set the land apart for the Indians' use and occupancy sufficed to establish the reservation. The Supreme Court affirmed *per curiam*. *Jones v. Healing*, 373 U.S. 758, 83 S. Ct. 1559 (1963).

Federal regulations also define an Indian "reservation" as: "land which has been **set aside or which has been acknowledged as having been set aside by the United States for the use of the tribe**, the exterior boundaries of which are more particularly defined in a final treaty, **Federal agreement**, Executive or secretarial order, Executive or secretarial proclamation, United States patent, Federal statute, or final judicial or **administrative determination**" 25 C.F.R. § 151.2 (emphasis added). As discussed below, the Dry Creek Rancheria was set aside and has been acknowledged as having been set aside by the United States for the Tribe's use, and its boundaries are particularly described in both a Federal agreement (an Indenture between the United States and C.H. Wilson et al.), and in an administrative determination (BIA Title Status Report). *Cf.* 25 C.F.R. § 150.2(h) ("Indian land is an inclusive term describing all lands held in trust by the United States for individual Indians or tribes, or . . . **all lands which are subject to the rights, of use, occupancy and/or benefit of certain tribes**. For purposes of this part, the term **Indian land also includes** land for which the title is held in fee status by Indian tribes, and **U.S. Government-owned land under Bureau jurisdiction**") (emphasis added).

B. The Dry Creek Rancheria is a "Reservation" Under Federal Law

Title to the Dry Creek Rancheria land was conveyed to the United States by the Deed of June 1, 1915. The Tribe's land was purchased pursuant to the Indian Appropriation Act of August 1, 1914, which provided "[f]or the purchase of lands for the homeless Indians of California, including improvements thereon, **for the use**

and occupancy of said Indians . . ." Pub. L. No. 63-159, 38 Stat. 582, 589 (emphasis added). The deed for the 75 acres of land, together with the abstract of title and census of the Dry Creek Indians, was sent to the Commissioner of Indian Affairs that same month, along with a memorandum from Special Indian Agent John J. Terrell recommending the expenditure of funds to finalize the purchase.

Agent Terrell's memorandum makes clear that the United States acquired this property for the Tribe's permanent use, occupation, and residence. For example, Agent Terrell wrote that "[t]he land named in this deed . . . is well watered by two perpetual running streams fed by springs, one of the streams carrying considerable water, in which the Indians may catch more or less fish in proper season; has ample supply of fine timbers for all domestic purposes, that is, for fuel, fencing and considerable suitable (sic) for house-building. In my opinion the timbers will virtually reproduce themselves about as fast as the Indians may use same for domestic purposes." Agent Terrell noted that while "[m]ost of this land is rough, there being only sufficient small spots of land at several points of character suitable for location of houses and small gardens, those portions not covered with timber are well set in fine grasses. There can be no question that the tract is well suited for an Indian village . . ." He recommended "the purchase of this 75 acres of land for a suitable and permanent home for the two bands of Indians named." Terrell's reference to "two bands" was to the Dry Creek and Geyserville bands of Pomo, for whom the land was jointly purchased. Finally, he noted that "[t]hese two bands are delighted at the prospect of at an early date being permitted to build their homes on land from which they will never be driven off, and from which they will be able to secure work nearby."

The Tribe's land was purchased under congressional authority and express Executive Branch intent to create a permanent homeland for the Tribe to use and occupy. The Tribe has used, occupied, and resided on the Dry Creek Rancheria for the past 91 years. Thus, it is a "reservation" under the well-established federal law discussed above. See *Mattz v. Arnett*, 412 U.S. 481, 491 n.13, 93 S. Ct. 2245, 2251 n.13; *McGowan*, 302 U.S. at 538-39, 58 S. Ct. at 288; *Spalding v. Chandler*, 160 U.S. 394, 403, 16 S. Ct. 360, 364 (1896); *Sac and Fox Nation v. Norton*, 240 F.3d 1250, 1266 (10th Cir. 2001); *Healing*, 210 F. Supp. at 129; 25 C.F.R. § 151.2; Felix Cohen, *Handbook of Federal Indian Law* 34-35 (1982 ed.).

It should come as no surprise, therefore, that the United States has already expressly determined that the Tribe's lands constitute a reservation. Specifically, the United States Department of Interior, Bureau of Indian Affairs, has determined that:

There is no distinction between the way the United States acquired and holds title to the Dry Creek Rancheria on the one hand, and "trust" or "reservation" status of Indian lands generally, on the other hand. All Indian trust lands are held in fee by the United States 'for the benefit of Indians. Given the United States' trust relationship with, and fiduciary duty to, the Dry Creek Band, the Tribe's lands are held in trust This trust relationship and fiduciary duty restrict the United States' ability to alienate the Tribe's lands as an Indian reservation, as trust lands held by the United States for the Tribe's benefit, and as subject to restriction against alienation by operation of the United States' trust and fiduciary obligation to the Tribe as demonstrate by three-quarters of a century of fulfilling those obligations.

Letter from Dale Risling, Sr., Superintendent, to Dry Creek Tribal Chairperson
Elizabeth DeRouen, March 29, 2002.

Consistent with this determination, the United States has for the past several decades referred to the Tribe's land as a "reservation," and has submitted a declaration setting forth official federal policy on the matter. See, e.g., Declaration of BIA Division Manager of Tribal Operations for the Central California Agency Raymond Fry in *Proschold v. United States*, No. C 01 2390 SBA, at ¶ 4 (N.D. Cal. June 17, 2002) ("the Dry Creek Band of Pomo Indians

Rancheria, or reservation, and the road easement leading into the Rancheria, are, in fact, trust assets of the Tribe"); *id.* at ¶ 7 ("the reservation land and the road leading into it constitute tribal lands which are held in trust for the Dry Creek Band of Pomo Indians by the United States as trustee").

Judicial authority has also recognized that there is no legal distinction between a "rancheria" and a "reservation." The court in *Duncan v. United States*, 667 F.2d 36 (Ct. Cl. 1981), for example, stated: "**Rancherias are numerous small Indian reservations** . . . in California, the lands for which were purchased by the Government (with Congressional authorization) for Indian use from time to time in the early years of this century . . ." *Id.* at 38 (emphasis added). The Dry Creek Rancheria, like the Robinson Rancheria in *Duncan*, was established on lands purchased by the Government following Special Agent Charles E. Kelsey's 1905-1906 inquiry and subsequent Congressional appropriations.

In *City of Roseville v. Norton*, 348 F.3d 1020 (D.C. Cir. 2003), the court, in discussing the Auburn Indian Restoration Act's provisions for lands to be taken into trust for the Auburn Indian Band, refers repeatedly to the Band's "former reservation" when referring to the Auburn Rancheria. *Id.* at 1022, 1023, 1025, 1028, 1032. The opinion also refers to the Band's "old reservation," "pre-termination reservation," and "earlier reservation land," *id.* at 1030, and to its "new reservation," *id.* at 1021, 1030, and "reservation." *Id.* at 1023, 1028, 1029. Indeed, the Auburn Indian Restoration Act itself provides that all lands taken into trust pursuant to the Act "shall be part of the Tribe's reservation." *Id.* at 1027 (quoting 25 U.S.C. § 13001-2(c)).

Similarly, the court in *Santa Rosa Band of Indians v. Kings County*, 532 F.2d 655 (9th Cir. 1975), in holding that county zoning ordinances did not apply on the Santa Rosa Rancheria, uses the terms "reservation" and "rancheria" interchangeably, making various references to "reservation trust lands," *id.* at 661, 662, "reservation lands," *id.* at 663, "the reservation," *id.* at 664, "reservation resources," *id.* at 664, "reservation Indians," *id.* at 664, and "the Rancheria." *Id.* at 665, 668. The *Santa Rosa* court also noted that the Rancheria received housing assistance as part of the Department of Health, Education and Welfare's "widespread project to upgrade various California Reservation water and sanitation system." *Id.* at 657.

Thus the Dry Creek Rancheria is unquestionably a "reservation" within the meaning of federal law generally, and 18 U.S.C. § 1151 and 40 C.F.R. § 122.2 specifically.¹

C. Congress Ratified the "Indian country" Status of All Rancheria Lands in the Rancheria Act

In 1958, Congress enacted the California Rancheria Act, acknowledging the existence of, and permitting the termination of, the trust relationship between the United States and the Indian tribes on 41 enumerated rancherias and reservations in California, subject to certain specified procedures and preconditions, including affirmative approval by a majority of tribal members (which never occurred at Dry Creek). See *Smith v. United States*, 515 F. Supp. 56 (N.D. Cal. 1978). "For many years there were throughout California numerous small Indian communities called rancherias, **with title of the lands of these communities vested in the United States in trust for the resident Indians.**" *Smith*, 515 F.Supp. at 57 (emphasis added). "The United States controlled the rancheria lands under the special fiduciary duty owed by the United States to the Indian people." *Id.* As *Smith* noted, in "1964 the [California Rancheria]

Act was amended to include *all rancherias* and reservations lying wholly in California." *Id.* at 58 n.1 (emphasis added).

By enacting the Rancheria Act, as amended, Congress specifically acknowledged and ratified the trust or reservation status of all rancheria lands as they existed prior to any termination. The *Smith* court found that "[s]ince these sections of the [Rancheria] Act *evidence Congressional intent to hold Rancheria lands in trust for the Indian people of the rancherias, as in fact was done, and to continue the lands in such trust status until all requirements for termination under the Act are met* and the lands actually distributed, the plaintiffs' lands herein did not become subject to taxation." *Id.* at 61 (emphasis added). *Cf. Shoshone Tribe v. United States*, 299 U.S. 476, 490, 57 S.Ct. 244, 248 (1937) (discussing Congress' recognition of status quo regarding certain tribal land rights). Thus, "[t]he Rancheria Act clearly states the understanding of the 1958 Congress that Rancheria lands had been and would continue to be held in trust until final termination." *Duncan v. U.S.*, 667 F.2d 36, 42 (Ct.Cl. 1981).

The Dry Creek Rancheria's status as "Indian country" is further confirmed by review of the Court of Claims' decision in *Duncan v. United States*, 667 F.2d 36 (Ct.Cl. 1981), *cert. denied*, 463 U.S. 1228 (1983). *Duncan* involved the termination of the Robinson Rancheria and an alleged illegal distribution of tribal assets. The United States' Court of Claims cited a decision in the Northern District Federal Court for the proposition that "until the purported termination, legal title to the land of the Robinson Rancheria remained in the United States, although it was acknowledged that the United States held it in trust for the California Indians." *Duncan*, 667 F.2d at 41.

The Court of Claims held:

"Not only are we bound by that ruling under the doctrine of issue preclusion, but we agree with it and come to the same conclusion on our own. We do so on the basis of the context and language of the original appropriation, acts authorizing purchase of the Robinson tract; *the contemporaneous and continuing interpretation by the agency charged with supervision of the rancherias; and the wording of the Rancheria Act demonstrating a subsequent Congress' acknowledgment of the trust relationship.*"

Id. at 41 (emphasis added). See also *Duncan v. Andrus*, 517 F. Supp. 1 (N.D. Cal. 1977).

The court held that "while not expressly stating that the United States held the land as trustee, Congress clearly contemplated that this land have the same status as reservation lands." *Duncan*, 667 F.2d at 41. In addition to purchasing lands, the 1906 Act authorized the Secretary of the Interior to "fence, survey and mark the boundaries of such Indian Reservations." *Id.* (citing United States Department of the Interior, Federal Indian Law 609 (rev. ed. 1958) (noting that it is not necessary that Congress use the word 'reservation' to create Indian Reservation lands)). Thus, the court found that Congress need not expressly use a talismanic phrase such as "trust relationship" or "hold in trust" in order to establish a trust relationship and reservation status. *Id.* at 41-44. The holding in *Duncan v. United States* is directly on point with regard to the trust status of all rancherias in California, including the Dry Creek Rancheria.

D. The Number of Indian "Reservations" in California is Not Limited to Four

SUFC claims that the Dry Creek Rancheria is not a reservation based on the California Indian Reservation Act of April 8, 1864, which it incorrectly asserts limited the number of reservations to four. That assertion ignores over one hundred and forty years of federal legal precedent and Congressional and administrative acts and history.

More than a century ago and almost 40 years after the California Indian Reservation Act, the Supreme Court held in *Minnesota v. Hitchcock*, 185 U.S. 373 (1902), that "**in order to create a reservation it is not necessary that there should be a formal cession or a formal act setting apart a particular tract**. It is enough that from what has been done there results a certain defined tract appropriate to certain purposes." *Id.* at 389-90 (emphasis added). See also *United States v. John*, 437 U.S. 634, 649 (1978) (holding land purchased by United States for Indians and taken into trust is a reservation and "Indian country" within the meaning of 18 U.S.C. § 1151); *Spalding v. Chandler*, 160 U.S. 394, 403-04 (1896).

Similarly, in *United States v. McGowan*, 302 U.S. 535, 58 S. Ct. 286 (1938), the Supreme Court made it clear that there is no magic in the word "reservation" and that land purchased for Indian use and occupancy was sufficient to establish an Indian reservation and create "Indian country." In *McGowan*, the Court held that "it is immaterial whether Congress designates a settlement as a 'reservation' or 'colony.'" *Id.* at 538-59, 58 S. Ct. at 288. Rather, what is important in determining whether certain lands constitute an Indian reservation is whether the land "had been validly **set apart for the use of the Indians as such, under the superintendence of the government**." *Id.* at 538-39, 58 S.Ct. at 288 (quoting *United States v. Pelican*, 232 U.S. 442, 449, 34 S. Ct. 396, 399, 58 L. Ed. 676 (1914)) (emphasis added). Cf. *Oklahoma Tax Comm'n v. Citizen Band Potawatomi Indian Tribe of Oklahoma*, 498 U.S. 505, 511, 111 S.Ct. 905, 910 (1991) ("the test for determining whether land is Indian country does not turn upon whether that land is denominated 'trust land' or 'reservation.' Rather, **we ask whether the area has been validly set apart for the use of the Indians as such, under the superintendence of the Government**") (internal quotations omitted) (emphasis added); *United States v. Sandoval*, 231 U.S. 28 (1913) (holding that Pueblo Indian lands held in fee were Indian country); Cohen, at 42 ("Lands for the residence of tribal Indians under federal protection have been set aside under a myriad of conditions and with such diverse designations as Indian country, territory, town, village, settlement, reservation, reserve, tract, pueblo, allotment, rancheria, colony, and dependent Indian community. The Supreme Court has held that the Indian country status of tribal lands does not depend on the common label attached to them, nor is any particular formality required.").

More recent federal cases addressing the question of what is a reservation have similarly found that "the established common-law meaning of the term 'reservation,' as used in the context of Indian tribes, refers to **land set aside by the federal government for the occupation of tribal members**." *Sac and Fox Nation*, 240 F.3d at 1266 (emphasis added). Functionally, the same definition is also found in *Mattz v. Arnett*, 412 U.S. 481, 491 n.13, 93 S.Ct. 2245, 2251 n.13 (1973): "the essential characteristics of [an Indian] reservation [include that the land] was regularly established by the proper authority; has been for years and is so occupied by Indians now, and is regarded and treated as such reservation by the executive branch of the government, to which has been committed the management of Indian affairs." *Id.* (quoting *Crichton v. Shelton*, 33 I.D. 205, 212-213 (1904)). See also *Idaho v. U.S.*, 533 U.S. 262, 266, 121 S.Ct. 2135, 2139 (2001) ("the Tribe in 1873 agreed to relinquish (for compensation) all claims to its aboriginal lands outside the bounds of a more substantial reservation that negotiators for the United States agreed to set apart and secure for the exclusive use of the Coeur d'Alene Indians, and to protect . . . from settlement or occupancy by other

persons") (internal quotations omitted); *United States v. Pelican*, 232 U.S. 442, 449, 34 S. Ct. 396, 399 (1914) ("the original reservation was Indian country simply because it had been validly set apart for the use of the Indians as such, under the superintendence of the government"); *Spalding v. Chandler*, 160 U.S. 394, 403, 16 S. Ct. 360 (1896) (creation of a reservation confers upon the tribe "the right to possess and occupy the lands for the uses and purposes designated").

In light of the above, it is simply not tenable to claim that the number of reservations in California is limited to four. Moreover, as shown below, Dry Creek Rancheria would still be "Indian country" even if it were not a reservation since it is a dependent Indian community.

E. Dry Creek Rancheria Would Alternatively Qualify As "Indian country" Because It Meets the Definition of a "Dependant Indian Community" Under Sections 1151 and 122

Even were the Dry Creek Rancheria not to qualify as "Indian country" by virtue of its being "lands within the limits of an[] Indian reservation . . ." as provided in 18 U.S.C. § 1151 and 40 C.F.R. § 122.2, it would still be "Indian country" under the second prong of the definition, as a "dependent Indian community."

The Supreme Court has said that the term "dependent Indian community" in 18 U.S.C. § 1151(b) covers any "area . . . validly set apart for the use of Indians as such, under the superintendence of the Government[.]" *Oklahoma Tax Comm'n v. Citizen Band Potawatomi Indian Tribe*, 498 U.S. 505, 511 (1991), and noted that Congress intended to define "Indian country" broadly when enacting 18 U.S.C. § 1151(b). See *Oklahoma Tax Comm'n v. Sac and Fox Nation*, 508 U.S. 114, 125 (1993) (quoting Felix Cohen, *Handbook of Federal Indian Law* 34 (1982 ed.) ("[T]he intent of Congress, as elucidated by [Supreme Court] decisions, was to designate as Indian country all lands set aside by whatever means for the residence of tribal Indians under federal protection, together with trust and restricted Indian allotments")).

The term "dependent Indian community" in 18 U.S.C. § 1151(b) is derived from the Supreme Court's decisions in *United States v. Sandoval*, 231 U.S. 29 (1913) (applying term to lands held in fee simple under a Spanish land grant by the Santa Clara Pueblo in New Mexico, who had relations with the federal government and for whom agents had been appointed through the Indian Service), and *United States v. McGowan*, 302 U.S. 535, 539 (1938) (concluding that the Reno Indian Colony in Nevada was Indian country because it was "validly set apart for the use of the Indians" and was "under the superintendence of the government").

As discussed above, the lands of the Dry Creek Rancheria were, like the lands of the Santa Clara Pueblo and the Reno Indian Colony, set apart for the use of the Indians living there and are under the superintendence of the federal government. These two requirements are all that is needed to qualify as a "dependent Indian community" under 18 U.S.C. § 1151(b) and 40 C.F.R. § 122.2. See *Citizen Band Potawatomi*, 498 U.S. at 511. Thus, even ignoring the case law holding that Indian rancherias in California are "reservations," the Dry Creek Rancheria would still be treated as "Indian country" for purposes of 18 U.S.C. § 1151(b) and 40 C.F.R. § 122.2 because it is also a "dependent Indian community."²

Conclusion

John Tinger
November 4, 2006
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Based on the foregoing, there is no doubt that the lands of the Dry Creek Rancheria, purchased under the Appropriations Acts for the Tribe's use and occupancy, title to which is held by the United States and over which the United States exercises superintendence, is "Indian country" under 18 U.S.C. § 1151, 40 C.F.R. § 122.2, and federal law. Thus EPA has jurisdiction to issue the permit under consideration.

If you have any remaining questions or concerns, or if you would like any additional information concerning these matters, please contact the undersigned.

Sincerely yours,

HOLLAND & KNIGHT LLP

J. Michelle Hickey

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1 SUFC's mention, without citation or support, of a case it describes as Amador County v. Secretary of Interior, is irrelevant. The Dry Creek Rancheria Band of Pomo Indians is not a party to that case, and any pending decision therein will not and cannot have any preclusive effect as to the Tribe.

2 SUFC's reliance on an Alaska case is entirely misplaced. Congress enacted the Alaska Native Claims Settlement Act as a unique statute to settle all Alaska Native claims "without creating a reservation system . . . or trusteeship . . ." 43 U.S.C. § 1601. The authority cited has no application whatsoever to any Indian tribes or lands in the lower 48 states generally, or to Dry Creek specifically.

Appendix 2
to comment response document for the Dry Creek
Rancheria NPDES Permit No. 0005241

U.S. Army Corps of Engineers 404 determination

**Letter: from Calvin Fong, U.S. Army Corps of Engineers to Eric Fischer, Environmental
Sciences Association, dated: July 9, 2004**



DEPARTMENT OF THE ARMY
SAN FRANCISCO DISTRICT, U.S. ARMY CORPS OF ENGINEERS
333 MARKET STREET
SAN FRANCISCO, CALIFORNIA 94105-2197

REPLY TO

JUL 09 2004

Regulatory Branch

SUBJECT: File No. 288620N

Mr. Eric Fischer
Environmental Sciences Associates
8950 Cal Center Drive, Suite 300
Sacramento, California 95826

RECEIVED
JUL 13 2004
ENVIRONMENTAL SCIENCES ASSOCIATES

Dear Mr. Fischer:

This is in reference to your letter of May 3, 2004, on behalf of the Dry Creek Band of Pomo Indians, requesting confirmation of the extent of Corps of Engineers (Corps) jurisdiction on the 18-acre Dugan Property (APN 140-260-003), located at 2979 State Highway 128, approximately two miles southeast of the Town of Geyserville, in Sonoma County, California.

The enclosed map entitled, "Dugan Property Wetland Delineation," in one (1) sheet date certified June 25, 2004, accurately depicts the extent and location of Corps jurisdiction within the project boundary area. The jurisdictional delineation is based on the current conditions of the site, as verified during a field investigation of June 15, 2004, and other data included with your submittal. This jurisdictional determination will expire in five (5) years from the date of this letter, unless new information or a change in field conditions warrants a revision to the delineation map prior to the expiration date.

Unless exempt by regulation, all proposed discharges of dredged or fill material occurring below the plane of ordinary high water in non-tidal waters of the United States and within the lateral extent of wetlands adjacent to these waters will require Department of the Army authorization and the issuance of a permit under Section 404 of the Clean Water Act (33 U.S.C. § 1344). Waters of the United States generally include the territorial seas, all navigable waters, including waters subject to the ebb and flow of the tide, non-tidal interstate and intrastate waters, and their tributary waters, including lakes, ponds, rivers, streams, intermittent streams, and adjacent wetlands, the use, degradation, or destruction of which could affect interstate or foreign commerce. Section 404 waters within the project boundary area consist *solely* of an intermittent drainage, referred to as Channel A, that is considered to be an interstate waters since it traverses both State and federally recognized tribal land (33 CFR § 328.3(a)(2)). The plane of ordinary high water is defined by the presence of scouring, shelving, and transitional vegetation along the banks.

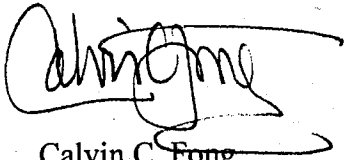
The Corps has further determined that all other intermittent drainages and wetlands on the Dugan Property are **not** currently subject to regulation under Section 404 of the Clean Water Act. Although a defined ordinary high water mark is present in the intermittent drainages and the requisite hydrophytic vegetation, hydrology, and hydric soils are present in the wetland areas, these particular water bodies are presumed to be isolated due to their relative distance, topographic positioning, and absence of an observed hydrologic connection to a regulated tributary waters. This jurisdictional determination is consistent with the U.S. Supreme Court decision of January 9, 2001, concerning the *Solid Waste Association of Northern Cook County v. United States Corps of Engineers*, 531 U.S. 159 (2001), (hereinafter "SWANCC"). In the SWANCC decision, the Court invalidated, at least, portions of the Migratory Bird Rule as a nexus to the Commerce Clause and ruled that the Corps had exceeded its statutory authority in exerting jurisdiction over non-navigable isolated, intrastate waters that did not provide some other interstate or foreign commerce use (33 CFR § 328.3(a)(3)). If the Dugan Property subsequently became a federally recognized tribal land, then these other intermittent drainages and wetlands would be considered as interstate waters and wetlands (33 CFR § 328.3(a)(2)), or wetlands adjacent to interstate waters (33 CFR § 328.3(a)(7)), and subject to regulation under Section 404 of the Clean Water Act.

This determination on the current jurisdictional status of the Dugan Property does not obviate any requirement to obtain other Federal, State, or local approvals necessitated by law, including compliance with the Endangered Species Act of 1973, as amended (16 U.S.C. § 1531 *et seq.*). Any potential project related impacts to "waters of the State" could be subject to regulation by the Regional Water Quality Control Board under the Porter-Cologne Water Quality Control Act (Water Code § 13000 *et seq.*) and by the California Department of Fish and Game. You are therefore advised to contact those agencies directly to determine the need for other authorizations or permits.

You are advised that the Corps has established an Administrative Appeal Process, as described in 33 CFR Part 331 (65 Fed. Reg. 16,486; Mar. 28, 2000), and outlined in the enclosed flowchart and "Notification of Administrative Appeal Options, Process, and Request for Appeal (NAO-RFA) Form." If you do not intend to accept the approved jurisdictional determination, you may elect to provide new information to the District Engineer for reconsideration or submit a completed NAO-RFA Form to the Division Engineer to initiate the appeal process. You will relinquish all rights to appeal, unless the Corps receives new information or a completed NAO-RFA Form within sixty (60) days of the date of this letter.

You may refer any questions on this matter to Mr. Peter Straub of my staff at telephone 415-977-8443 or by e-mail at pstraub@spd.usace.army.mil. All correspondence should be addressed to the Regulatory Branch, North Section, referencing the file number at the head of this letter.

Sincerely,

A handwritten signature in black ink, appearing to read "Calvin C. Fong", written over a horizontal line.

Calvin C. Fong
Chief, Regulatory Branch

Enclosures

Copies Furnished:

US EPA, San Francisco, CA
CA RWQCB, Santa Rosa, CA
CA SWRCB, Sacramento, CA

Appendix 3
to comment response document for the Dry Creek
Rancheria NPDES Permit No. 0005241

Water Balance

Technical Memorandum: from Curtis Lam, Hydrosience Engineers to John Tinger, US
EPA, dated: 12/22/06

updated 4/24/07

Technical Memorandum



To: John Tinger, USEPA
From: Curtis Lam
Subject: Response to Comment 9-4: Water Balance
Date: December 22, 2006 (**updated April 24, 2007**)
CC: Tom Keegan, Erich Fischer, Michelle Hickey

Purpose

The purpose of this memorandum is to provide the Tribe's response to Comment No. 9-4 for the Dry Creek Rancheria Band of Pomo Indians' proposed NPDES Permit No. CA0005241.

Comment

9-4: A complete "water balance" analysis has not been provided. There is a "pressing need for some evidence that the Tribe's proposed disposal and storage scheme is actually feasible as a matter of fact. Neither the proposed statement of basis nor the proposed permit includes a water balance or other information demonstrating that the Tribe's surface discharges, storage areas, and spray fields could actually accommodate the proposed 300 percent increase in treated wastewater." It is not at all clear whether the proposed effluent disposal/storage scheme is feasible to surface waters, the limited land area for effluent disposal and the uncertainties described in the proposed permit.

Response to Comment

The Tribe has prepared this water balance in response to Comment No. 9-4. This water balance is presented in the attached **Table 1**, and described below. This water balance was updated to reflect the removal of Stream A1 as a surface water discharge.

This water balance provided an effluent disposal strategy for two different flow situations. One flow rate assumed disposal at the current average flow rate of 28,000 gpd, the other at a projected flow rate of 120,000 gpd. The higher flow rate was selected based on it being a relatively high average daily flow rate. Since the facilities required to store, treat, and discharge 120,000 gpd are greater than the 2004 average daily flow rate of 28,000 gpd, those facilities are described below.

If 120,000 gpd of wastewater is generated every day, approximately 134 acre-feet per year (AFY) of effluent is produced. This effluent would be discharged as follows:

Toilets/urinals: Approximately 15,000 gpd of recycled water would be used for toilet and urinal flushing year round, which is equivalent to 16.8 AFY (12.5% of total volume). Available recycled water is first used for toilet and urinal flushing on-site prior to all other uses.

Irrigation: Irrigation of up to 12 acres of tribal lands (including spray fields, landscaped areas, etc.) would be at agronomic rates. Agronomic rates are based on climatological data as defined by the local California Irrigation Management Information Service weather station. A discussion of how this data translates to a monthly unit irrigation demand is contained below.

Based on local climate data and agronomic rates, irrigation water is typically only required between March and October. During other months, the average precipitation rate is higher than the evapotranspiration (ET) rates. Thus, plants do not have a demand for excess water during these times.

Based on an annual ET rate for CIMIS Station #103, the total annual volume of water used for irrigation of Tribal lands is equal to 50.2 AFY (37.3% of the total volume). All remaining recycled water (following the usage for toilets/urinals) is used for irrigation of Tribal lands when irrigation water is needed.

Stream P1: Discharge to Stream P1 would only occur after the toilet/urinal and on-site irrigation demands are satisfied. Additionally, discharge to Stream P1 is limited to the time period between October 1 and May 14, and flow limited as specified in the permit. Since wintertime irrigation demands are relatively low, effluent generated during these times is either reused on-site for toilet/urinal flushing, or discharged to Stream P1. The total volume discharged to Stream P1 is 67.48 AFY (50.2% of total volume). Additionally, during the end of the summer, when irrigation demands decrease due to lower ET rates, and discharge to Stream P1 is not allowed, some effluent would be seasonally stored on-site. Based on these calculations, up to 3.14 AF will need to be stored during August and September. This stored volume of water would be detained in on-site recycled water storage tanks or ponds until discharge to Stream P1 is allowed. During the allowable discharge period, Stream P1 flows would be slightly higher than the daily effluent flows, as the on-site storage facilities are drained. However, flows to Stream P1 would still remain within the flow limitations identified in the NPDES permit.

Irrigation Demands

To supplement this comment response, the following section contains information about how the monthly irrigation demands were calculated.

Irrigation demands were calculated based on the historical average CIMIS data for Station #103 in Windsor, CA. This station was selected based on its close proximity to the Rancheria, and its active status. The monthly average evapotranspiration and precipitation data was downloaded from the CIMIS website, which is located at <http://www.cimis.water.ca.gov/>.

To calculate a monthly average unit irrigation demand, the following assumptions were utilized.

ET Rates: ET is a measure of water usage by a particular plant or crop, and is a function of the net solar radiation, air temperature, wind speed, and vapor pressure in a particular location. Evapotranspiration rates for a specific crop in a specific location are calculated on a monthly basis by the following equation:

$$ET = ET_o * k_c$$

where:

- ET_o = Normal year reference crop evapotranspiration rate for CIMIS Station #103 in Windsor
 k_c = Crop coefficient for a given crop (University of California Cooperative Extension Leaflet, 1997), which is equal to 1.15

Precipitation: During the months from November through March, an additional six inches (30 inches total) for each month was added to the CIMIS Station #103 data to account for rainfall from a 100-year storm. The average annual precipitation rate was 32.79 inches per year. With the 100-year storm season, the precipitation rate used in this calculation was 62.79 inches per year.

Estimated Unit Irrigation Demands: Typical monthly unit irrigation demands for turf grasses are summarized in and were calculated using the following formula:

$$ID = \frac{(ET - Pe_p)l_r}{e_i}$$

where:

- ID = Irrigation demand or allowable irrigation in inches
- ET = Evapotranspiration for turf grasses in the Windsor area
- P = Average precipitation (CIMIS + 100-year storm season)
- e_p = Precipitation irrigation efficiency, 0.75. Assumes 25% of rainfall during growing season is lost to evaporation, runoff, etc.
- l_r = Loss Rate or Leachate Factor, equal to 1.2. This assumes that approximately 10% of the applied water passes through the grass root zone and is lost.
- e_i = Irrigation efficiency, equal to 0.8. This assumes that 20% of the applied irrigation water is lost to evaporation.

The net monthly unit irrigation demand calculated based on this data is shown in **Table 2**. These irrigation demands were used to size the required on-site irrigation areas on the Rancheria.

Table 2: Summary of Monthly Unit Irrigation Demands

Month	Precipitation with 100-year (in)	Irrigation Demand (in)
January	10.22	0.00
February	10.48	0.00
March	12.36	0.12
April	12.94	4.35
May	9.27	8.17
June	2.53	10.24
July	1.10	11.43
August	0.85	9.96
September	0.92	6.56
October	1.01	2.69
November	0.31	0.00
December	0.81	0.00
Total	62.79	53.52

Table 1: Water Balance
Dry Creek Rancheria Band of Pomo Indians Response to Comment 9-4 for NPDES Permit No. CA 0005241

Water Balance for 28,000 gpd average daily flows (2004 average daily flow)

2004 Average Daily Flow 28000 gpd

Month	Days	Irr Demand (in)	Volume Discharged (Acre-feet)		
			Effluent Volume	Toilets/Urinals	On-site Irrigation Usage
January	31	0.00	2.66	0.71	1.95
February	28	0.00	2.41	0.64	1.76
March	31	0.12	2.66	0.71	1.95
April	30	4.35	2.58	0.69	1.89
May	31	8.17	2.66	0.71	1.95
June	30	10.24	2.58	0.69	1.89
July	31	11.43	2.66	0.71	1.95
August	31	9.96	2.66	0.71	1.95
September	30	6.56	2.58	0.69	1.89
October	31	2.69	2.66	0.71	1.95
November	30	0.00	2.58	0.69	1.89
December	31	0.00	2.66	0.71	1.95
Total (AF)			31.37	8.40	22.96
Total (MG)			10.22	2.74	7.48

Water Balance for 120,000 gpd average daily flows

Potential Average Daily Flow 120000 gpd

Month	Days	Irr Demand (in)	Volume Discharged (Acre-feet)				
			Effluent Volume	Toilets/Urinals	On-site Irrigation Demand	Stream P1	Net Volume in Storage
January	31	0.00	11.42	1.43	0.00	9.99	0.00
February	28	0.00	10.31	1.29	0.00	9.02	0.00
March	31	0.12	11.42	1.43	0.12	9.87	0.00
April	30	4.35	11.05	1.38	4.35	5.32	0.00
May	31	8.17	11.42	1.43	6.81	3.18	0.00
June	30	10.24	11.05	1.38	9.67	0.00	0.00
July	31	11.43	11.42	1.43	9.99	0.00	0.00
August	31	9.96	11.42	1.43	9.96	0.00	0.03
September	30	6.56	11.05	1.38	6.56	0.00	3.14
October	31	2.69	11.42	1.43	2.69	10.44	0.00
November	30	0.00	11.05	1.38	0.00	9.67	0.00
December	31	0.00	11.42	1.43	0.00	9.99	0.00
Total (AF)			134.43	16.80	50.15	67.48	
Total (MG)			43.80	5.48	16.34	21.99	

Notes:

Water balance assumes maximizing on-site (toilets/urinals and irrigation) usage before discharge to a surface water
Toilets/urinals fixed at an estimated 7,500 gpd year round for 2004 water balance, and 15,000 gpd for potential water balance
Irrigation demand based on CIMIS station #80, located in Santa Rosa. Adjustment factors for the average rainfall, 100-year storm season adjustment, irrigator efficiency, turfgrass K value, and leachate value were used to determine an irrigation demand per month.
Landscape irrigation available to the Tribe during 2004 was five acres. It was noted that 2004 irrigation application rates are higher than the agronomic demand.
For the 120,000 gpd water balance, irrigation demands are based on irrigated at local evapotranspiration rates and having up to twelve acres available for irrigation.
Stream P1 discharges are zero between May 15 and September 30. May discharges to Stream P1 are assumed to only occur between May 1 and May 1
AF = Acre-feet, MG = Million Gallons
Tribe had approximately 1.2 MG (3.8 AF) of seasonal recycled water storage in 2005

Appendix 4
to comment response document for the Dry Creek
Rancheria NPDES Permit No. 0005241

Monitoring Data:

Priority pollutant scan on Wastewater Treatment Plant Effluent.

Sample date: 9/26/06

Hardness data on Wastewater Treatment Plant Effluent. Sample date: 1/11/07



alpha

Alpha Analytical Laboratories Inc.

208 Mason Street, Ukiah, California 95482

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11 October 2006

Dry Creek Rancheria

Attn: Felix Hernandez

P.O. Box 607

Geyserville, CA, 95441

RE: Priority Pollutants

Work Order: A609738

Enclosed are the results of analyses for samples received by the laboratory on 09/26/06 12:20. If you have any questions concerning this report, please feel free to contact me.

Sincerely,

Cheryl Watson For Nena M. Burgess
Project Manager



Alpha Analytical Laboratories Inc.

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CHEMICAL EXAMINATION REPORT

Page 1 of 12

Dry Creek Rancheria
P.O. Box 607
Geyserville, CA, 95441
Attn: Felix Hernandez

Report Date: 10/11/06 16:34
Project No: Priority Pollutants
Project ID: Priority Pollutants

Order Number
A609738

Receipt Date/Time
09/26/2006 12:20

Client Code
DCRAN

Client PO/Reference

ANALYTICAL REPORT FOR SAMPLES

Sample ID	Laboratory ID	Matrix	Date Sampled	Date Received
WWTP Effluent 1	A609738-01	Water	09/26/06 10:00	09/26/06 12:20
WWTP Effluent 2	A609738-02	Water	09/26/06 10:01	09/26/06 12:20
WWTP Effluent 3	A609738-03	Water	09/26/06 10:03	09/26/06 12:20
WWTP Effluent 4	A609738-04	Water	09/26/06 10:05	09/26/06 12:20
WWTP Effluent 5	A609738-05	Water	09/26/06 10:06	09/26/06 12:20
WWTP Effluent 6	A609738-06	Water	09/26/06 10:08	09/26/06 12:20
WWTP Effluent 7	A609738-07	Water	09/26/06 10:09	09/26/06 12:20
WWTP Effluent 8	A609738-08	Water	09/26/06 10:11	09/26/06 12:20
WWTP Effluent 9	A609738-09	Water	09/26/06 10:12	09/26/06 12:20
WWTP Effluent 10	A609738-10	Water	09/26/06 10:13	09/26/06 12:20
WWTP Effluent 11	A609738-11	Water	09/26/06 10:15	09/26/06 12:20
WWTP Effluent 12	A609738-12	Water	09/26/06 10:17	09/26/06 12:20
WWTP Effluent 13	A609738-13	Water	09/26/06 10:21	09/26/06 12:20
WWTP Effluent 14	A609738-14	Water	09/26/06 10:23	09/26/06 12:20
WWTP Effluent 15	A609738-15	Water	09/26/06 10:24	09/26/06 12:20
WWTP Effluent 16	A609738-16	Water	09/26/06 10:26	09/26/06 12:20
WWTP Effluent 17	A609738-17	Water	09/26/06 10:28	09/26/06 12:20

The results in this report apply to the samples analyzed in accordance with the chain of custody document. This analytical report must be reproduced in its entirety.

Bruce L. Gove
Laboratory Director

10/11/2006



Alpha Analytical Laboratories Inc.

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CHEMICAL EXAMINATION REPORT

Page 2 of 12

Dry Creek Rancheria
P.O. Box 607
Geyserville, CA, 95441
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CHEMICAL EXAMINATION REPORT

Page 3 of 12

Dry Creek Rancheria
P.O. Box 607
Geyserville, CA, 95441
Attn: Felix Hernandez

Report Date: 10/11/06 16:34
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Project ID: Priority Pollutants

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09/26/2006 12:20

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Client PO/Reference

Alpha Analytical Laboratories, Inc.

	METHOD	BATCH	PREPARED	ANALYZED	DILUTION	RESULT	POL	NOTE
WWTP Effluent 1 (A609738-01)			Sample Type: Water			Sampled: 09/26/06 10:00		
Metals by EPA 200 Series Methods								
Aluminum	EPA 200.7	AI62502	09/27/06	10/03/06	1	0.13 mg/l		0.050
Antimony	EPA 200.9	"	"	10/09/06	"	ND "		0.0060
Arsenic	"	"	"	09/30/06	"	ND "		0.0020
Barium	EPA 200.7	"	"	10/03/06	"	ND "		0.10
Beryllium	"	"	"	"	"	ND "		0.0010
Cadmium	"	"	"	"	"	ND "		0.0010
Chromium	"	"	"	"	"	ND "		0.0020
Copper	"	"	"	"	"	ND "		0.0020
Iron	"	"	"	"	"	ND "		0.10
Lead	EPA 200.9	"	"	10/04/06	"	ND "		0.0020
Manganese	EPA 200.7	"	"	10/03/06	"	ND "		0.020
Mercury	EPA 245.1	AJ60205	10/03/06	10/04/06	"	ND "		0.0010
Nickel	EPA 200.7	AI62502	09/27/06	10/03/06	"	0.0052 "		0.0020
Selenium	EPA 200.9	"	"	10/02/06	"	ND "		0.0050
Silver	EPA 200.7	"	"	10/03/06	"	ND "		0.020
Thallium	EPA 200.9	"	"	10/09/06	"	ND "		0.0020
Zinc	EPA 200.7	"	"	10/03/06	"	0.015 "		0.010
WWTP Effluent 2 (A609738-02)			Sample Type: Water			Sampled: 09/26/06 10:01		
Conventional Chemistry Parameters by APHA/EPA Methods								
Cyanide (total)	EPA 335.2	AI62706	09/27/06	09/29/06	1	ND mg/l		0.020
WWTP Effluent 5 (A609738-05)			Sample Type: Water			Sampled: 09/26/06 10:06		
Nitrogen- and Phosphorus- Pesticides by EPA Method 507								
Alachlor	EPA 507	AJ60801	10/06/06	10/09/06	1	ND ug/l		1.0
Atrazine	"	"	"	"	"	ND "		0.10
Chlorpyrifos	"	"	"	"	"	ND "		0.50
Diazinon	"	"	"	"	"	ND "		0.50
Molinate	"	"	"	"	"	ND "		0.25
Simazine	"	"	"	"	"	ND "		0.50

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Bruce L. Gove
Laboratory Director

10/11/2006



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CHEMICAL EXAMINATION REPORT

Page 4 of 12

Dry Creek Rancheria
P.O. Box 607
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Alpha Analytical Laboratories, Inc.

METHOD	BATCH	PREPARED	ANALYZED	DILUTION	RESULT	POL	NOTE
WWTP Effluent 5 (A609738-05)							
Sample Type: Water				Sampled: 09/26/06 10:06			
Nitrogen- and Phosphorus- Pesticides by EPA Method 507 (cont'd)							
Thiobencarb	EPA 507	"	"	10/09/06	"	ND "	0.25
Surrogate: 1,3-Dimethyl-2-nitrobenzene	"	"	"	"		80.0 %	70-130
Surrogate: Triphenyl phosphate	"	"	"	"		83.2 %	70-130
WWTP Effluent 6 (A609738-06)							
Sample Type: Water				Sampled: 09/26/06 10:08			
Chlorinated Acids by EPA Method 515.1							
Acifluorfen	EPA 515.1	AI62822	09/27/06	09/28/06	1	ND ug/l	0.20
Bentazon	"	"	"	"	"	ND "	0.40
2,4-D	"	"	"	"	"	ND "	1.0
Dalapon	"	"	"	"	"	ND "	6.0
2,4-DB	"	"	"	"	"	ND "	5.0
DCPA acid metabolites	"	"	"	"	"	ND "	0.20
Dicamba	"	"	"	"	"	ND "	0.40
Dichlorprop	"	"	"	"	"	ND "	1.0
Dinoseb	"	"	"	"	"	ND "	1.0
4-Nitrophenol	"	"	"	"	"	ND "	0.40
Pentachlorophenol	"	"	"	"	"	ND "	0.10
Picloram	"	"	"	"	"	ND "	0.20
2,4,5-T	"	"	"	"	"	ND "	0.50
2,4,5-TP (Silvex)	"	"	"	"	"	ND "	0.50
Surrogate: DCAA	"	"	"	"		81.5 %	70-130
WWTP Effluent 7 (A609738-07)							
Sample Type: Water				Sampled: 09/26/06 10:09			
Carbamates by EPA Method 531.1							
Aldicarb	EPA 531.1	AI62807	09/28/06	09/29/06	1	ND ug/l	3.0
Aldicarb sulfone	"	"	"	"	"	ND "	3.0
Aldicarb sulfoxide	"	"	"	"	"	ND "	4.0
Carbaryl	"	"	"	"	"	ND "	5.0
Carbofuran	"	"	"	"	"	ND "	5.0
3-Hydroxycarbofuran	"	"	"	"	"	ND "	3.0

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Bruce L. Gove
Laboratory Director

10/11/2006



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208 Mason Street, Ukiah, California 95482

CHEMICAL EXAMINATION REPORT

Page 5 of 12

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Alpha Analytical Laboratories, Inc.

	METHOD	BATCH	PREPARED	ANALYZED	DILUTION	RESULT	POL	NOTE
WWTP Effluent 7 (A609738-07)		Sample Type: Water				Sampled: 09/26/06 10:09		
Carbamates by EPA Method 531.1 (cont'd)								
Methiocarb	EPA 531.1	"	"	09/29/06	"	ND "	5.0	
Methomyl	"	"	"	"	"	ND "	2.0	
Oxamyl	"	"	"	"	"	ND "	20	
Propoxur	"	"	"	"	"	ND "	5.0	
WWTP Effluent 8 (A609738-08)		Sample Type: Water				Sampled: 09/26/06 10:11		
Glyphosate by EPA Method 547								
Glyphosate	EPA 547	AJ60212	10/02/06	10/02/06	1	ND ug/l	10	
WWTP Effluent 10 (A609738-10)		Sample Type: Water				Sampled: 09/26/06 10:13		
Diquat by EPA Method 549.2								
Diquat	EPA 549.2	AJ60307	10/03/06	10/09/06	1	ND ug/l	0.40	
WWTP Effluent 11 (A609738-11)		Sample Type: Water				Sampled: 09/26/06 10:15		
Organochlorine Pesticides and PCBs by EPA Method 608								
Aldrin	EPA 608	AI62718	09/27/06	09/28/06	1	ND ug/l	0.010	
HCH-alpha	"	"	"	"	"	ND "	0.010	
HCH-beta	"	"	"	"	"	ND "	0.050	
HCH-delta	"	"	"	"	"	ND "	0.050	
HCH-gamma (Lindane)	"	"	"	"	"	ND "	0.010	
Chlordane (tech)	"	"	"	"	"	ND "	0.050	
4,4'-DDD	"	"	"	"	"	ND "	0.020	
4,4'-DDE	"	"	"	"	"	ND "	0.020	
4,4'-DDT	"	"	"	"	"	ND "	0.010	
Dieldrin	"	"	"	"	"	ND "	0.010	
Endosulfan I	"	"	"	"	"	ND "	0.020	
Endosulfan II	"	"	"	"	"	ND "	0.050	
Endosulfan sulfate	"	"	"	"	"	ND "	0.010	
Endrin	"	"	"	"	"	ND "	0.010	
Endrin aldehyde	"	"	"	"	"	ND "	0.050	

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Bruce L. Gove
Laboratory Director

10/11/2006



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208 Mason Street, Ukiah, California 95482

CHEMICAL EXAMINATION REPORT

Page 6 of 12

Dry Creek Rancheria
P.O. Box 607
Geyserville, CA, 95441
Attn: Felix Hernandez

Report Date: 10/11/06 16:34
Project No: Priority Pollutants
Project ID: Priority Pollutants

Order Number
A609738

Receipt Date/Time
09/26/2006 12:20

Client Code
DCRAN

Client PO/Reference

Alpha Analytical Laboratories, Inc.

METHOD	BATCH	PREPARED	ANALYZED	DILUTION	RESULT	POL	NOTE
WWTP Effluent 11 (A609738-11)				Sample Type: Water	Sampled: 09/26/06 10:15		
Organochlorine Pesticides and PCBs by EPA Method 608 (cont'd)							
Heptachlor	EPA 608	"	"	09/28/06	"	ND "	0.020
Heptachlor epoxide	"	"	"	"	"	ND "	0.020
Methoxychlor	"	"	"	"	"	ND "	0.020
Toxaphene	"	"	"	"	"	ND "	0.50
PCB-1016	"	"	"	"	"	ND "	0.50
PCB-1221	"	"	"	"	"	ND "	0.50
PCB-1232	"	"	"	"	"	ND "	0.50
PCB-1242	"	"	"	"	"	ND "	0.50
PCB-1248	"	"	"	"	"	ND "	0.50
PCB-1254	"	"	"	"	"	ND "	0.50
PCB-1260	"	"	"	"	"	ND "	0.50
Surrogate: Dibutylchloroendate	"	"	"	"	111 %	62-152	

WWTP Effluent 13 (A609738-13)

Sample Type: Water

Sampled: 09/26/06 10:21

Volatile Organic Compounds by EPA Method 624

Acetone	EPA 624	AI62806	09/27/06	09/27/06	1	ND ug/l	5.0
Acrolein	"	"	"	"	"	ND "	5.0
Acrylonitrile	"	"	"	"	"	ND "	5.0
Benzene	"	"	"	"	"	ND "	0.30
Bromobenzene	"	"	"	"	"	ND "	0.50
Bromochloromethane	"	"	"	"	"	ND "	0.50
Bromodichloromethane	"	"	"	"	"	ND "	0.50
Bromoform	"	"	"	"	"	ND "	0.50
Bromomethane	"	"	"	"	"	ND "	0.50
n-Butylbenzene	"	"	"	"	"	ND "	0.50
sec-Butylbenzene	"	"	"	"	"	ND "	0.50
tert-Butylbenzene	"	"	"	"	"	ND "	0.50
Carbon disulfide	"	"	"	"	"	ND "	5.0
Carbon tetrachloride	"	"	"	"	"	ND "	0.50
Chlorobenzene	"	"	"	"	"	ND "	0.50

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Bruce L. Gove
Laboratory Director

10/11/2006



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CHEMICAL EXAMINATION REPORT

Page 7 of 12

Dry Creek Rancheria
P.O. Box 607
Geyserville, CA, 95441
Attn: Felix Hernandez

Report Date: 10/11/06 16:34
Project No: Priority Pollutants
Project ID: Priority Pollutants

Order Number
A609738

Receipt Date/Time
09/26/2006 12:20

Client Code
DCRAN

Client PO/Reference

Alpha Analytical Laboratories, Inc.

METHOD	BATCH	PREPARED	ANALYZED	DILUTION	RESULT	POL	NOTE
WWTP Effluent 13 (A609738-13)		Sample Type: Water			Sampled: 09/26/06 10:21		
Volatile Organic Compounds by EPA Method 624 (cont'd)							
Chloroethane	EPA 624	"	09/27/06	"	ND "	0.50	
2-Chloroethylvinyl ether	"	"	"	"	ND "	1.0	
Chloroform	"	"	"	"	0.66 "	0.50	
Chloromethane	"	"	"	"	ND "	0.50	
2-Chlorotoluene	"	"	"	"	ND "	0.50	
4-Chlorotoluene	"	"	"	"	ND "	0.50	
Dibromochloromethane	"	"	"	"	ND "	0.50	
1,2-Dibromo-3-chloropropane	"	"	"	"	ND "	0.50	
1,2-Dibromoethane (EDB)	"	"	"	"	ND "	0.50	
Dibromomethane	"	"	"	"	ND "	0.50	
1,2-Dichlorobenzene	"	"	"	"	ND "	0.50	
1,3-Dichlorobenzene	"	"	"	"	ND "	0.50	
1,4-Dichlorobenzene	"	"	"	"	ND "	0.50	
trans-1,4-Dichloro-2-butene	"	"	"	"	ND "	5.0	
Dichlorodifluoromethane	"	"	"	"	ND "	0.50	
1,1-Dichloroethane	"	"	"	"	ND "	0.50	
1,2-Dichloroethane	"	"	"	"	ND "	0.50	
1,1-Dichloroethene	"	"	"	"	ND "	0.50	
cis-1,2-Dichloroethene	"	"	"	"	ND "	0.50	
trans-1,2-Dichloroethene	"	"	"	"	ND "	0.50	
1,2-Dichloropropane	"	"	"	"	ND "	0.50	
1,3-Dichloropropane	"	"	"	"	ND "	0.50	
2,2-Dichloropropane	"	"	"	"	ND "	0.50	
1,1-Dichloropropene	"	"	"	"	ND "	0.50	
cis-1,3-Dichloropropene	"	"	"	"	ND "	0.50	
trans-1,3-Dichloropropene	"	"	"	"	ND "	0.50	
Diethyl ether	"	"	"	"	ND "	1.0	
Di-isopropyl ether	"	"	"	"	ND "	0.50	
Ethylbenzene	"	"	"	"	ND "	0.50	
Ethyl tert-butyl ether	"	"	"	"	ND "	0.50	

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Bruce L. Gove

Bruce L. Gove
Laboratory Director

10/11/2006



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CHEMICAL EXAMINATION REPORT

Page 8 of 12

Dry Creek Rancheria
P.O. Box 607
Geyserville, CA, 95441
Attn: Felix Hernandez

Report Date: 10/11/06 16:34
Project No: Priority Pollutants
Project ID: Priority Pollutants

Order Number
A609738

Receipt Date/Time
09/26/2006 12:20

Client Code
DCRAN

Client PO/Reference

Alpha Analytical Laboratories, Inc.

	METHOD	BATCH	PREPARED	ANALYZED	DILUTION	RESULT	POL	NOTE
WWTP Effluent 13 (A609738-13)		Sample Type: Water				Sampled: 09/26/06 10:21		
Volatile Organic Compounds by EPA Method 624 (cont'd)								
2-Hexanone	EPA 624	"	"	09/27/06	"	ND "	5.0	
Hexachlorobutadiene	"	"	"	"	"	ND "	0.50	
Isopropylbenzene	"	"	"	"	"	ND "	0.50	
p-Isopropyltoluene	"	"	"	"	"	ND "	0.50	
Methylene chloride	"	"	"	"	"	ND "	0.50	
Methyl ethyl ketone	"	"	"	"	"	ND "	1.0	
Methyl iodide	"	"	"	"	"	ND "	2.0	
Methyl isobutyl ketone	"	"	"	"	"	ND "	1.0	
Methyl tert-butyl ether	"	"	"	"	"	ND "	0.50	
Naphthalene	"	"	"	"	"	ND "	0.50	
n-Propylbenzene	"	"	"	"	"	ND "	0.50	
Styrene	"	"	"	"	"	ND "	0.50	
Tert-amyl methyl ether	"	"	"	"	"	ND "	0.50	
Tert-butyl alcohol	"	"	"	"	"	ND "	10	
1,1,1,2-Tetrachloroethane	"	"	"	"	"	ND "	0.50	
1,1,2,2-Tetrachloroethane	"	"	"	"	"	ND "	0.50	
Tetrachloroethene	"	"	"	"	"	ND "	0.50	
Tetrahydrofuran	"	"	"	"	"	ND "	5.0	
Toluene	"	"	"	"	"	ND "	0.30	
1,2,3-Trichlorobenzene	"	"	"	"	"	ND "	0.50	
1,2,4-Trichlorobenzene	"	"	"	"	"	ND "	0.50	
1,1,1-Trichloroethane	"	"	"	"	"	ND "	0.50	
1,1,2-Trichloroethane	"	"	"	"	"	ND "	0.50	
Trichloroethene	"	"	"	"	"	ND "	0.50	
Trichlorofluoromethane	"	"	"	"	"	ND "	0.50	
1,2,3-Trichloropropane	"	"	"	"	"	ND "	0.50	
Trichlorotrifluoroethane	"	"	"	"	"	ND "	0.50	
1,2,4-Trimethylbenzene	"	"	"	"	"	ND "	0.50	
1,3,5-Trimethylbenzene	"	"	"	"	"	ND "	0.50	
Vinyl acetate	"	"	"	"	"	ND "	0.50	

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Bruce L. Gove
Laboratory Director

10/11/2006

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CHEMICAL EXAMINATION REPORT

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Dry Creek Rancheria
P.O. Box 607
Geyserville, CA, 95441
Attn: Felix HernandezReport Date: 10/11/06 16:34
Project No: Priority Pollutants
Project ID: Priority PollutantsOrder Number
A609738Receipt Date/Time
09/26/2006 12:20Client Code
DCRANClient PO/Reference**Alpha Analytical Laboratories, Inc.**

	METHOD	BATCH	PREPARED	ANALYZED	DILUTION	RESULT	POL	NOTE
WWTP Effluent 13 (A609738-13)								
			Sample Type: Water			Sampled: 09/26/06 10:21		
Volatile Organic Compounds by EPA Method 624 (cont'd)								
Vinyl chloride	EPA 624	"	"	09/27/06	"	ND "	0.50	
m,p-Xylene	"	"	"	"	"	ND "	0.50	
o-Xylene	"	"	"	"	"	ND "	0.50	
Xylenes (total)	"	"	"	"	"	ND "	0.50	
Surrogate: Bromofluorobenzene	"	"	"	"		115 %	70-130	
Surrogate: Dibromofluoromethane	"	"	"	"		82.8 %	71-136	
Surrogate: Toluene-d8	"	"	"	"		92.0 %	80-130	
WWTP Effluent 14 (A609738-14)								
			Sample Type: Water			Sampled: 09/26/06 10:23		
Semivolatile Organic Compounds by EPA Method 625								
Acenaphthene	EPA 625	AJ60423	10/03/06	10/04/06	1	ND ug/l	1.0	
Acenaphthylene	"	"	"	"	"	ND "	10	
Anthracene	"	"	"	"	"	ND "	10	
Benidine	"	"	"	"	"	ND "	5.0	
Benzo (a) anthracene	"	"	"	"	"	ND "	10	
Benzo (a) pyrene	"	"	"	"	"	ND "	10	
Benzo (b) fluoranthene	"	"	"	"	"	ND "	10	
Benzo (g,h,i) perylene	"	"	"	"	"	ND "	5.0	
Benzo (k) fluoranthene	"	"	"	"	"	ND "	10	
Bis(2-chloroethoxy)methane	"	"	"	"	"	ND "	5.0	
Bis(2-chloroethyl)ether	"	"	"	"	"	ND "	1.0	
Bis(2-chloroisopropyl)ether	"	"	"	"	"	ND "	2.0	
Bis(2-ethylhexyl)adipate	"	"	"	"	"	ND "	5.0	
Bis(2-ethylhexyl)phthalate	"	"	"	"	"	ND "	5.0	
4-Bromophenyl phenyl ether	"	"	"	"	"	ND "	5.0	
Butyl benzyl phthalate	"	"	"	"	"	ND "	10	
4-Chloro-3-methylphenol	"	"	"	"	"	ND "	1.0	
2-Chloronaphthalene	"	"	"	"	"	ND "	10	
2-Chlorophenol	"	"	"	"	"	ND "	5.0	
4-Chlorophenyl phenyl ether	"	"	"	"	"	ND "	5.0	

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Bruce L. Gove
Laboratory Director

10/11/2006



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CHEMICAL EXAMINATION REPORT

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Dry Creek Rancheria
P.O. Box 607
Geyserville, CA, 95441
Attn: Felix Hernandez

Report Date: 10/11/06 16:34
Project No: Priority Pollutants
Project ID: Priority Pollutants

Order Number
A609738

Receipt Date/Time
09/26/2006 12:20

Client Code
DCRAN

Client PO/Reference

Alpha Analytical Laboratories, Inc.

	METHOD	BATCH	PREPARED	ANALYZED	DILUTION	RESULT	POL	NOTE
WWTP Effluent 14 (A609738-14)			Sample Type: Water		Sampled: 09/26/06 10:23			
Semivolatile Organic Compounds by EPA Method 625 (cont'd)								
Chrysene	EPA 625	"	"	10/04/06	"	ND "	10	
Dibenz (a,h) anthracene	"	"	"	"	"	ND "	10	
3,3' -Dichlorobenzidine	"	"	"	"	"	ND "	5.0	
2,4-Dichlorophenol	"	"	"	"	"	ND "	5.0	
Diethyl phthalate	"	"	"	"	"	ND "	2.0	
2,4-Dimethylphenol	"	"	"	"	"	ND "	2.0	
Dimethyl phthalate	"	"	"	"	"	ND "	2.0	
Di-n-butyl phthalate	"	"	"	"	"	ND "	10	
4,6-Dinitro-2-methylphenol	"	"	"	"	"	ND "	5.0	
2,4-Dinitrophenol	"	"	"	"	"	ND "	5.0	
2,4-Dinitrotoluene	"	"	"	"	"	ND "	5.0	
2,6-Dinitrotoluene	"	"	"	"	"	ND "	5.0	
Di-n-octyl phthalate	"	"	"	"	"	ND "	10	
1,2-Diphenylhydrazine	"	"	"	"	"	ND "	1.0	
Fluoranthene	"	"	"	"	"	ND "	1.0	
Fluorene	"	"	"	"	"	ND "	10	
Hexachlorobenzene	"	"	"	"	"	ND "	1.0	
Hexachlorobutadiene	"	"	"	"	"	ND "	1.0	
Hexachlorocyclopentadiene	"	"	"	"	"	ND "	5.0	
Hexachloroethane	"	"	"	"	"	ND "	1.0	
Indeno (1,2,3-cd) pyrene	"	"	"	"	"	ND "	10	
Isophorone	"	"	"	"	"	ND "	1.0	
Naphthalene	"	"	"	"	"	ND "	1.0	
Nitrobenzene	"	"	"	"	"	ND "	1.0	
2-Nitrophenol	"	"	"	"	"	ND "	10	
4-Nitrophenol	"	"	"	"	"	ND "	10	
N-Nitrosodimethylamine	"	"	"	"	"	ND "	5.0	
N-Nitrosodi-n-propylamine	"	"	"	"	"	ND "	5.0	
N-Nitrosodiphenylamine	"	"	"	"	"	ND "	1.0	
Pentachlorophenol	"	"	"	"	"	ND "	5.0	

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10/11/2006



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CHEMICAL EXAMINATION REPORT

Page 11 of 12

Dry Creek Rancheria
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Report Date: 10/11/06 16:34
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Project ID: Priority Pollutants

Order Number
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09/26/2006 12:20

Client Code
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Client PO/Reference

Alpha Analytical Laboratories, Inc.

METHOD	BATCH	PREPARED	ANALYZED	DILUTION	RESULT	POL	NOTE
WWTP Effluent 14 (A609738-14)							
Semivolatile Organic Compounds by EPA Method 625 (cont'd)				Sample Type: Water	Sampled: 09/26/06 10:23		
Phenanthrene	EPA 625	"	"	10/04/06	ND "	5.0	
Phenol	"	"	"	"	ND "	1.0	
Pyrene	"	"	"	"	ND "	10	
1,2,4-Trichlorobenzene	"	"	"	"	ND "	5.0	
2,4,6-Trichlorophenol	"	"	"	"	ND "	10	
Surrogate: 2-Fluorobiphenyl	"	"	"	"	73.5 %	45-112	
Surrogate: 2-Fluorophenol	"	"	"	"	43.8 %	17-81	
Surrogate: Nitrobenzene-d5	"	"	"	"	71.0 %	47-116	
Surrogate: p-Terphenyl-d14	"	"	"	"	96.5 %	56-137	
Surrogate: Phenol-d6	"	"	"	"	33.5 %	17-57	
Surrogate: 2,4,6-Tribromophenol	"	"	"	"	98.8 %	53-130	
WWTP Effluent 15 (A609738-15)							
Metals by EPA 6000/7000 Series Methods				Sample Type: Water	Sampled: 09/26/06 10:24		
Chromium, hexavalent	EPA 7196	A162702	09/27/06	09/27/06	1	ND mg/l	0.010

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Bruce L. Gove
Laboratory Director

10/11/2006



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CHEMICAL EXAMINATION REPORT

Page 12 of 12

Dry Creek Rancheria
P.O. Box 607
Geyserville, CA, 95441
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Report Date: 10/11/06 16:34
Project No: Priority Pollutants
Project ID: Priority Pollutants

Order Number
A609738

Receipt Date/Time
09/26/2006 12:20

Client Code
DCRAN

Client PO/Reference

Notes and Definitions

- S-GC Surrogate recovery outside of control limits. The data was accepted based on valid recovery of the remaining surrogates.
- QM-08 The RPD was outside acceptance limits for MS/MSD, possibly due to matrix interference. The LCS and/or LCSD were within acceptance limits showing that the laboratory is in control and the data is acceptable.
- QM-05 The spike recovery was outside acceptance limits for the MS and/or MSD due to matrix interference. The LCS and/or LCSD were within acceptance limits showing that the laboratory is in control and the data is acceptable.
- QM-03 The spike recovery was high for this analyte. The batch was accepted based on a non-detect for the analyte.
- QM-01 The spike recovery for this QC sample is outside of established control limits possibly due to a sample matrix interference.
- QL-05 LCS/LCSD recovery for this analyte was outside of control limits. All calibration checks were acceptable and matrix spike recovery was within control limits.
- QL-03 Although the LCS/LCSD recovery for this analyte is outside of in-house developed control limits, it is within the EPA recommended range of 70-130%.
- DET Analyte DETECTED
- ND Analyte NOT DETECTED at or above the reporting limit
- NR Not Reported
- dry Sample results reported on a dry weight basis
- RPD Relative Percent Difference
- PQL Practical Quantitation Limit



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16 January 2007

Dry Creek Rancheria

Attn: Felix Hernandez

P.O. Box 607

Geyserville, CA, 95441

RE: Operations

Work Order: 07A0388

Enclosed are the results of analyses for samples received by the laboratory on 01/11/07 14:45. If you have any questions concerning this report, please feel free to contact me.

Sincerely,

Nena M. Burgess
Project Manager



Alpha Analytical Laboratories Inc.

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CHEMICAL EXAMINATION REPORT

Page 1 of 3

Dry Creek Rancheria
P.O. Box 607
Geyserville, CA, 95441
Attn: Felix Hernandez

Report Date: 01/16/07 15:17
Project No: Wastewater
Project ID: Operations

Order Number
07A0388

Receipt Date/Time
01/11/2007 14:45

Client Code
DCRAN

Client PO/Reference

ANALYTICAL REPORT FOR SAMPLES

Sample ID	Laboratory ID	Matrix	Date Sampled	Date Received
Effluent 6	07A0388-01	Water	01/11/07 10:25	01/11/07 14:45

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Bruce L. Gove
Laboratory Director

1/16/2007



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CHEMICAL EXAMINATION REPORT

Page 2 of 3

Dry Creek Rancheria
P.O. Box 607
Geyserville, CA, 95441
Attn: Felix Hernandez

Report Date: 01/16/07 15:17
Project No: Wastewater
Project ID: Operations

Order Number
07A0388

Receipt Date/Time
01/11/2007 14:45

Client Code
DCRAN

Client PO/Reference

Alpha Analytical Laboratories, Inc.

	METHOD	BATCH	PREPARED	ANALYZED	DILUTION	RESULT	POL	NOTE
Effluent 6 (07A0388-01)	Sample Type: Water					Sampled: 01/11/07 10:25		
Metals by EPA 6000/7000 Series Methods								
Calcium	EPA 6010	AA70316	01/11/07	01/11/07	1	35 mg/l	1.0	
Magnesium	"	"	"	"	"	13 "	1.0	
Conventional Chemistry Parameters by APHA/EPA Methods								
Hardness, Total	SM2340B	AA70316	"	01/11/07	1	147 mg/l	5	

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Bruce L. Gove
Laboratory Director

1/16/2007



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CHEMICAL EXAMINATION REPORT

Page 3 of 3

Dry Creek Rancheria
P.O. Box 607
Geyserville, CA, 95441
Attn: Felix Hernandez

Report Date: 01/16/07 15:17
Project No: Wastewater
Project ID: Operations

Order Number
07A0388

Receipt Date/Time
01/11/2007 14:45

Client Code
DCRAN

Client PO/Reference

Notes and Definitions

DET Analyte DETECTED
ND Analyte NOT DETECTED at or above the reporting limit
NR Not Reported
dry Sample results reported on a dry weight basis
RPD Relative Percent Difference
PQL Practical Quantitation Limit

432

Page ~~12~~ ofPage ~~12~~ of

Signature below authorizes work under terms stated on reverse side

TAT

24 hr

48 hr

Approved
Revised

1 wk

C

STRENGTH

7

1998

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